

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Application by BellSouth Corp.,)
BellSouth Telecommunications, Inc.,) CC Docket No. 97-208
and BellSouth Long Distance, Inc.)
for Provision of In-Region,)
InterLATA Services in South Carolina)

To the Commission:

**OPPOSITION OF INTERMEDIA COMMUNICATIONS INC.
TO BELL SOUTH'S MOTION TO STRIKE**

INTERMEDIA COMMUNICATIONS INC. ("Intermedia"), by and through its attorneys, hereby submits its opposition to BellSouth's motion to strike portions of reply comments.¹ As explained at length below, BellSouth's motion has no basis in law and/or in fact and, hence, must be denied.

DISCUSSION

The gravamen of BellSouth's motion is that Intermedia purportedly presented new claims and documents in its reply comments. Specifically, BellSouth claims that Intermedia presented new claims regarding the implementation of its interconnection agreement with BellSouth, as well as submitted "voluminous" documents relating to events

¹ BellSouth's Motion to Strike Portions of Reply Comments Raising New Arguments and/or Including New Evidence (filed Dec. 4, 1997) (*Strike Motion*).

that occurred before the deadline for initial comments. For these reasons, BellSouth argues that portions of Intermedia's reply comments, including Appendices A through K, should be stricken.

A thorough and thoughtful review by BellSouth of Intermedia's comments and reply comments would have obviated BellSouth's motion and, consequently, would have saved Intermedia, BellSouth, and the Commission invaluable time and resources. Intermedia addresses BellSouth's claims *in seriatim* below.

BellSouth's Assertion that Intermedia Presented New Claims. As a preliminary matter, the portion of BellSouth's motion relating to Intermedia is fatally flawed because it lacks specificity. Other than providing a generalized allegation that Intermedia presented new claims regarding its interconnection agreement, and citing to Intermedia's Declaration, BellSouth offered no particulars as to what these "new claims" are and which portions of pages 9-15 of Intermedia's reply comments relate to the alleged "new claims." Indeed, BellSouth cannot offer a more particularized allegation because, in fact, Intermedia did not present any new claims. What Intermedia did offer were clarifications designed to rebut BellSouth's assertions and/or to expound on Intermedia's original assertions that BellSouth has failed miserably to implement its interconnection agreement with Intermedia.

Moreover, BellSouth either is clearly confused or has simply decided to take a shotgun approach to challenging Intermedia's reply comments. BellSouth cites to the Declaration of Julia Strow on Behalf of Intermedia Communications Inc. to show that Intermedia presented new claims in its reply. It would thus seem that, based on BellSouth's

allegations, the offending portion of Intermedia's reply is the Declaration.² Yet, BellSouth asserts only that pages 9 through 15 and Appendices A through K of Intermedia's comments should be stricken. Nowhere in the *Strike Motion* does BellSouth state that Intermedia's Declaration should be stricken.

Finally, as stated above, BellSouth proposes to strike pages 9-15 of Intermedia's reply wholesale. Even assuming, however, that certain of the assertions on pages 9-15 of the reply relate to new claims, striking pages 9-15 in their entirety is manifestly inappropriate. Those pages contain arguments that specifically rebut certain of BellSouth's representations, as well the arguments put forth by the South Carolina Public Service Commission. Striking pages 9-15 in their entirety is not only inappropriate and overly broad, but also egregiously unfair.

BellSouth's Allegation that Intermedia Introduced Additional Voluminous Documents. BellSouth also seeks to strike portions of Intermedia's reply because Intermedia allegedly introduced "voluminous" documents addressing events that occurred before the deadline for filing initial comments. Aside from the fact that BellSouth has given the word "voluminous" an entirely new meaning,³ these documents were appended to Intermedia's reply in order to clarify Intermedia's original assertion that BellSouth has not provided Intermedia with the unbundled network elements Intermedia requested well over a year ago.

² Intermedia submits that neither the Declaration, nor pages 9 through 15, nor Appendices A through K, contain any new claims.

³ All in all, Intermedia submitted a total of 43 pages of exhibits. This can hardly be called "voluminous."

Moreover, with respect to certain tabulars provided by Intermedia (appended to the reply comments as Appendices B and C), the data contained therein were not compiled until November 4 and November 6, respectively--weeks after the comment deadline--and clearly could not have been presented in Intermedia's initial comments.⁴

BellSouth's Claim that Appendices A through K Were Not Verified.

BellSouth additionally claims that Appendices A through K should be stricken because they were not verified. Despite the novelty of BellSouth's argument, there is no support for the proposition that all exhibits must be verified. These exhibits speak for themselves and do not require verification. To adopt BellSouth's logic would require each party to this proceeding to unnecessarily submit thousands of verifications in the aggregate. The Commission requires only that "factual assertions, as well as expert testimony, submitted by any party must also be supported by an affidavit or verified statement of a person or persons with personal knowledge thereof."⁵ Intermedia fully complied with the requirement when it submitted Julia Strow's signed and fully notarized Declaration.

Even assuming, *arguendo*, that Intermedia's exhibits should have been verified--and Intermedia strongly believes that such verifications are both unnecessary and not required--BellSouth's motion to strike is ill-advised and must be denied. The Commission previously had denied a similar motion to strike by Ameritech. In *Ameritech-*

⁴ These documents were also attached to Intermedia's *ex parte* notice dated November 6, 1997. Thus, BellSouth had been put on notice that the information contained therein would be introduced into the record.

⁵ *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, FCC 97-330 (Sept. 19, 1997).

Michigan,⁶ the Commission rejected Ameritech's motion to strike Brooks Fiber's opposition on the ground that Brooks Fiber's opposition did not include an affidavit or verified statement certifying the accuracy of Brook Fiber's factual assertions. The Commission held that

[b]ecause we believe that the failure by a party to certify the accuracy of the *factual assertions contained in its comments* goes to the *weight*, and *not to the admissibility*, of its comments, we decline to grant Ameritech's motion.⁷

Thus, even if BellSouth's claims were true--and Intermedia unequivocally states that they are not--the Commission's decision in *Ameritech-Michigan* dictates that BellSouth's motion to strike must fail.

CONCLUSION

BellSouth's motion to strike portions of Intermedia's comments has no basis in law and/or in fact. The Commission should summarily reject BellSouth's transparent, last-ditch attempt to obfuscate the real issues in this proceeding.

⁶ *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 1997 FCC LEXIS 4454 (adopted Aug. 19, 1997) (*Ameritech-Michigan*).

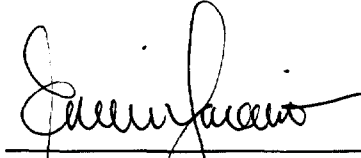
⁷ *Id.*, at ¶ 48 (emphasis added).

WHEREFORE, Intermedia respectfully requests that the Commission decline to grant BellSouth's request.

Respectfully submitted,

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Dated: December 15, 1997

CERTIFICATE OF SERVICE

I, Marlene Borack, hereby certify that I have served a copy of the foregoing "OPPOSITION OF INTERMEDIA COMMUNICATIONS INC. TO BELL SOUTH'S MOTION STRIKE" on this 15th day of December 1997, upon the following parties via first-class mail, postage prepaid:

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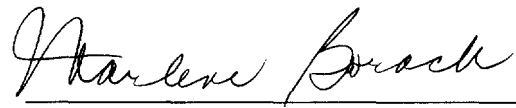
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